UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF CALIFORNIA

THOMAS GENE MAYFIELD, Petitioner, v. L.S. MCEWEN, Warden, et al., Respondents.	Civil No. 10-2234-LAB(WVG) REPORT AND RECOMMENDATION GRANTING RESPONDENT'S MOTION TO DISMISS (DOC. # 10)

I

INTRODUCTION

Thomas Gene Mayfield (hereinafter "Petitioner"), a state prisoner proceeding *pro se*, has filed a Petition for Writ of Habeas Corpus (hereinafter "Petition"), pursuant to 28 U.S.C. § 2254. Respondent L.S. McEwen (hereinafter "Respondent") has filed a Motion to Dismiss the Petition for Writ of Habeas Corpus (hereinafter "Motion to Dismiss"). Petitioner has filed an Opposition to Respondent's Motion to Dismiss (hereinafter "Opposition").

On January 7, 2009, Petitioner appeared before a panel of the Board of Parole Hearings, which denied him parole. Petitioner

contends that the panel was biased, that the panel based its decision on unchangeable factors, and that the panel had insufficient evidence to make a determination as to his dangerousness upon release. Therefore, Petitioner argues that the Board of Parole Hearings violated his right to due process under the Fifth and Fourteenth Amendments of the United States Constitution.

The Court has considered the Petition, Respondent's Motion to Dismiss, and Petitioner's Opposition. Based upon the documents and evidence presented in this case, and for the reasons set forth below, the Court RECOMMENDS that the Motion to Dismiss be GRANTED.

II

FACTUAL AND PROCEDURAL BACKGROUND

Petitioner was convicted of one count of conspiracy to commit murder while armed with a firearm and three counts of assault with a deadly weapon by the Superior Court of Los Angeles County. (Petition at 2). On May 17, 1985, Petitioner was sentenced to a state prison term of 22 years to life imprisonment. His minimum parole eligibility date was September 9, 2000. Id.

On January 7, 2009, Petitioner appeared before a two member panel of the Board of Parole Hearings. The panel members were Deputy Commissioner Carol Bentley and Commissioner Archie Biggers. Id. The panel denied Petitioner parole, finding that Petitioner would pose a present risk of danger to society if released. Id. The panel took into account several factors including the nature of the commitment offense, the number of victims, the motive for the crime, prior criminal behavior, Petitioner's mental state and attitude toward the crime, a psychological report, and several instances of serious misconduct while he was incarcerated. Id. at 2-3.

The Petition includes exhibits showing that Deputy Commissioner Bentley's husband was involved in the drafting of legislation to allow companies to form joint ventures with the California Department of Corrections and Rehabilitation (hereinafter "CDCR") and that Petitioner had successfully sued one of the resulting joint ventures for wrongful termination. Exhibit 2 to the Petition is an excerpt from the transcript of a parole panel hearing for Inmate Willhoite. In Exhibit 2, Deputy Commissioner Bentley states that her husband was involved in drafting the relevant legislation. Exhibit 3 to the Petition is a newspaper article reporting a successful lawsuit against Western Manufacturing by six inmates, including one Thomas Mayfield.[1/] Respondent's Motion to Dismiss refers to Deputy Commissioner Bentley's husband as "purportedly connected" to the legislation but does not contest the validity of Exhibit 2. The Motion to Dismiss also states that Petitioner "allegedly later sued" but does not contest the validity of Exhibit 3.

III

PETITIONER'S CLAIMS FOR RELIEF

Petitioner raises three claims for relief. First, he argues that the panel members from the Board of Parole Hearings were biased. Second, he contends that the panel unconstitutionally based its decision to deny him parole on unchangeable factors. Third, petitioner argues that the panel failed to properly consider evidence that purportedly showed his suitability for parole.

[1/] Claude Walbert, *Court Blasts Officials Over Inmate Wages*, Los Angeles Daily Journal, Aug. 23, 2004.

A. PAROLE PANEL WAS BIASED

Petitioner argues that the Board of Parole Hearings' panel conducted a "bias[ed] hearing." (Petition at 4). Specifically, he notes that Deputy Commissioner Carol Bentley's husband "was directly involved in authoring the legislation to bring joint venture programs into" the CDCR and that the Petitioner was "one of six inmates who [successfully] sued one of the [participating joint venture companies]. Id. Further, Petitioner contends that Commissioner Archie Biggers was also biased. Specifically, Petitioner alleges that Commissioner Biggers reviewed confidential information in his file for the hearing and that Commissioner Biggers does not like ex-gang members. See id. at 11.

Therefore, Petitioner contends that Commissioner Bentley's and Biggers' participation violated his Fifth and Fourteenth Amendment due process rights to be heard by a fair and impartial decision-maker. See id.; Withrow v. Larkin, 421 U.S. 35, 47 (1975).

B. PAROLE PANEL INCORRECTLY CONSIDERED UNCHANGEABLE FACTORS

Also, Petitioner argues that the parole panel based its decision to deny him parole on unchangeable factors such as the commitment offense and did not properly consider whether Petitioner would be a threat to society if released. (Petition at 4). Specifically, Petitioner argues that, due to the passage of time since his conviction, the unchangeable factors in his case were no longer indicative of a risk of danger to society. Therefore, Petitioner contends that, by basing its decision to deny him parole on these factors, the panel violated his Fifth and Fourteenth Amendment due process rights. Id. at 13.

C. PAROLE PANEL INCORRECTLY BALANCED EVIDENCE RELATING TO PETITIONER'S SUITABILITY FOR PAROLE

Petitioner argues that the parole panel failed to properly balance factors militating against his parole with those showing his suitability for parole. Id. at 4. Specifically, Petitioner claims that the parole panel paid only "lip service" to his achievements while he was incarcerated and did not truly consider these factors in its decision-making process. (Petition at 39). Petitioner points to his stable social history, indicia of remorse, age, educational activities, participation in self-help programs, and behavioral record as examples of favorable parole factors that he believes the panel did not give sufficient weight. (Petition at 39-43). Petitioner appears to contend that the panel's purported failure to consider the factors showing suitability for parole indicates bias on the part of the panel and that Petitioner was therefore denied his constitutional due process right to be heard by a fair and impartial decision-maker. (See Id. at 4, 38-46).

IV

STANDARD OF REVIEW

In order for federal subject matter jurisdiction over a petition for writ of habeas corpus to lie, the petition must allege that the petitioner is in custody in violation of the Constitution, laws or treaties of the United States. See 28 U.S.C.A. § 2254(a).

In habeas corpus cases, federal courts are bound by the state's interpretation of its own law. Estelle v. McGuire, 502 U.S. 62, 68 (1991) (federal courts may not reexamine state court determinations on questions of state law); Jackson v. Ylst, 921 F.2d 882, 885 (9th Cir. 1990) (federal courts "have no authority to

review a state's application of its own laws.") However, "errors of state law do not concern [a federal court] *unless* they rise to the level of a constitutional violation"). Oxborrow v. Eikenberry, 877 F.2d 1395, 1400 (9th Cir. 1989), emphasis added.

The Antiterrorism and Effective Death Penalty Act of 1996 (hereinafter "AEDPA") applies to habeas corpus petitions filed after April 24, 1996. See Lindh v. Murphy, 521 U.S. 320, 322-23 (1997). The Petition in this case was filed on October 26, 2010 and is therefore governed by AEDPA. To obtain federal habeas relief, Petitioner must satisfy either U.S.C.A. § 2254(d)(1) or (2). See Williams v. Taylor, 529 U.S. 362, 403 (2000).

The Supreme Court interprets § 2254(d)(1)and (2) as follows:

> Under the "contrary to" clause, a federal habeas court may grant the writ if the state court arrives at a conclusion opposite to that reached by this Court on a question of law or if the state court decides a case differently than this Court has on a set of materially indistinguishable facts. Under the "unreasonable application" clause, a federal habeas court may grant the writ if the state court identifies the correct governing legal principle from this Court's decisions but unreasonably applies that principle to the facts of the prisoner's case.

Williams, 529 U.S. at 412-13.

A state court's decision may be found to be "contrary to" clearly established Supreme Court precedent: (1) "if the state court applies a rule that contradicts the governing law set forth in [the Court's] cases" or (2) "if the state court confronts a set of facts that are materially indistinguishable from a decision of [the] Court and nevertheless arrives at a result different from the [the court's] precedent." Id. at 405-406; Lockyer v. Andrade, 538 U.S. 63, 72-75 (2003). A state court decision involves an "unreasonable

application" of clearly established federal law, "if the state court identifies the correct governing legal rule from this Court's cases but unreasonably applies it to the facts of the particular state prisoner's case," or, "if the state court either unreasonably extends a legal principle from our precedent to a new context where it should not apply or unreasonably refuses to extend that principle to a new context where it should apply." Williams, 539 U.S. at 407; Andrade, 538 U.S. at 76.

When there is no reasoned decision from the state's highest court, the Court "looks through" to the underlying appellate court decision. Ylst v. Nunnmeaker, 501 U.S. 797, 801-06 (1991). If the dispositive state court order does not "furnish a basis for its reasoning," federal habeas courts must conduct an independent review of the record to determine whether the state court's decision is contrary to, or an unreasonable application of, clearly established Supreme Court law. See Delgado v. Lewis, 223 F.3d 976, 982 (9th Cir. 2000) (overruled in part by Andrade, 538 U.S. at 74-77).

V

PETITIONER IS NOT ENTITLED TO RELIEF

The United States Supreme Court has stated that a petitioner may demonstrate a violation of procedural due process by showing that: 1) a federally-protected life, liberty, or property interest exists "which has been interfered with by the State"; and 2) "the procedures attendant upon that deprivation were constitutionally [in]sufficient." Kentucky Dept. of Corrections v. Thompson, 490 U.S. 454, 460 (1989).

As to a "federally protected" interest, the Supreme Court has recognized a federally-protected liberty interest in the expectancy

of release on parole arising from state parole statutes. See Greenholtz v. Inmates of Nebraska Penal and Corr. Complex, 442 U.S. 1, 12 (1979); see also Board of Pardons v. Allen, 482 U.S. 369, 377-78 (1987) (holding that mandatory language in a Montana parole statute created "a presumption that parole will be granted," thereby creating a protected liberty interest.) The California parole statute likewise "gives rise to a cognizable liberty interest in release on parole." McQuillion v. Duncan, 306 F.3d 895, 902 (9th Cir. 2002). Here, there is no dispute that the Petitioner has a federally-protected liberty interest in the expectancy of release on parole.

As to the procedures attendant upon deprivation of due process involving the denial of parole, the Supreme Court has recently stated that "the procedures required are minimal." Swarthout v. Cooke, 131 S.Ct. 859, 862 (2011); see also Greenholtz, 442 U.S. at 12. Essentially, the federal process due a prisoner at a parole hearing is limited to "the opportunity to be heard" and "a statement of reasons why parole was denied". Swarthout, 131 S.Ct. at 862. "Because the only federal right at issue is procedural, the relevant inquiry is what process [Petitioner] received, not whether the state court decided the case correctly. Swarthout, 131 S.Ct. at 863.

A. ASSERTION OF BIAS IS BASED ON INADEQUATE AND CONCLUSORY ALLEGATIONS

Petitioner's first claim for relief is based on alleged bias of Deputy Commissioner Bentley and Commissioner Biggers. Rule 2 of the Rules Governing Habeas Corpus Cases requires that a petitioner "state the facts supporting each ground" for relief. Rule 2(c)(2),

foll. 28 U.S.C. § 2254 (hereinafter "Rule 2".) Under Rule 2, "mere conclusory allegations without the support of facts" are insufficient. Farrow v. U.S., 580 F.2d 1339, 1361-1362 (9th Cir. 1972); Schlette v. Allen, 284 F.2d 827, 834 (9th Cir. 1960); Henderson v. Cate, 2009 WL 3126858 at *7 (S.D. Cal. 2009).

1. Deputy Commissioner Bentley

Petitioner alleges that Deputy Commissioner Bentley was biased because her husband drafted legislation to bring joint venture companies into the CDCR and that Petitioner had previously successfully sued one of the participating joint venture companies.

The Ninth Circuit has noted that "[b]ald assertions and conclusory allegations" are insufficient to allow a claim of bias to lie. See Wacht v. Cardwell, 604 F.2d 1245, 1247 n. 2 (9th Cir. 1979). Here, Petitioner claims that "[t]here is no reasonable doubt that" Deputy Commissioner Bentley's husband's involvement with the CDCR joint venture programs prevented Petitioner from getting a fair and impartial hearing. (Petition at 11). However, Petitioner does not explain why his successful lawsuit against a joint venture company would create bias on the part of the wife of an individual who participated in drafting legislation that merely allowed joint venture companies into the CDCR. Therefore, Petitioner fails to state a *prima facie* case for relief that "overcome[s] a presumption of honesty and integrity" of Deputy Commissioner Bentley. Withrow v. Larkin, 421 U.S. 35, 46-47 (1975); see also Stivers v. Pierce, 71 F.3d 732, 741 (9th Cir. 1995). As a result, Petitioner's contention that Deputy Commissioner Bentley was biased is an unsupported conclusory allegation.

2. Commissioner Biggers

Further, Petitioner contends that Commissioner Biggers was biased due to a dislike of ex-gang members and because Commissioner Biggers considered confidential information from Petitioner's file.

Petitioner does not identify any evidence of Commissioner Biggers' purported dislike of ex-gang members, rendering his argument little more than a bald assertion. As noted above, merely stating a conclusion without stating facts that support the conclusion does not satisfy the requirement of sufficient specificity. Wacht, 604 F.2d at 1247 n. 2.

Next, Petitioner's claim that Commissioner Biggers considered confidential information in Petitioner's file appears unconnected to Petitioner's conclusion that Commissioner Biggers was biased. Commissioner Biggers was required to review all information in Petitioner's file in determining Petitioner's parole suitability. Cal. Code of Reg., tit. 15, § 2402(b) ("[a]ll relevant, reliable information available to the panel shall be considered in determining suitability for parole.") Petitioner does not claim, nor present evidence, that the confidential information in his file was irrelevant or unreliable. Petitioner does not explain how the statutorily-required consideration of such information leads to his conclusion that Commissioner Biggers was biased.

Therefore, Petitioner fails to state a *prima facie* case for relief that "overcome[s] a presumption of honesty and integrity" of Commissioner Biggers. Withrow, 421 U.S. at 46-47; see also Stivers, 71 F.3d at 741. As a result, Petitioner's contention that Commissioner Biggers was biased is an unsupported conclusory allegation.

Therefore, the Court RECOMMENDS that Respondent's Motion to Dismiss in this regard be GRANTED.

B. WHETHER THE PAROLE BOARD CONSIDERED UNCHANGEABLE FACTORS IS IRRELEVANT IN FEDERAL HABEAS CORPUS REVIEW

Petitioner's second claim for relief is that the parole board relied on unchangeable factors in violation of state parole policies. He illustrates this claim with numerous examples of purported variations between California policies and the panel's determination in his parole hearing. The Court will not comment on the materiality of the purported variations. But, the Court notes that Petitioner's claim appears to rest solely on the allegedly improper application of state law by state authorities. Federal courts "have no authority to review a state's application of its own laws." Jackson, 921 F.2d at 885. More specifically, "the responsibility for assuring that the constitutionally adequate procedures governing California's parole system are property applied rests with California courts, and is no part of the Ninth Circuit's business." Swarthout, 131 S.Ct. at 863.

The sole exception to this limitation exists when errors of state law "rise to the level of a constitutional violation." See Oxborrow, 877 F.2d at 1400. Here, Petitioner argues that he suffered a constitutional violation of his due process rights. In the case of habeas petitions resulting from parole denials, as here, a federal court's due process inquiry is limited to two factors. First, whether the petitioner "was allowed an opportunity to be heard" and second, whether the petitioner "was provided a statement of the reasons why parole was denied." Swarthout, 131 S.Ct. at 862, citing Greenholtz, 442 U.S. at 16.

Petitioner claims that he was not given an opportunity to be heard because the parole panel was biased. The Court notes that the only federal aspect of Petitioner's second claim for relief relies upon acceptance of the first claim for relief (alleged bias of Deputy Commissioner Bentley and Commissioner Biggers). This Court has recommended that Petitioner's first claim for relief be denied, because it rests solely upon unsupported conclusory allegations. As a result, the second claim for relief also fails.

In any event, Petitioner admits that he was given an opportunity to be heard at his parole hearing and was provided with a statement of the reasons why parole was denied. (Petition, Exh. 1, Opposition to Motion to Dismiss at 5)

Therefore, the Court RECOMMENDS that Respondent's Motion to Dismiss in this regard be GRANTED..

C. FAILURE TO CORRECTLY WEIGH FACTORS IN FAVOR OF PAROLE REQUIRED BY CALIFORNIA LAW DOES NOT IMPLICATE FEDERAL LAW

Petitioner's argues that the parole panel did not temper factors militating against his parole with other factors that indicated his suitability for parole. In support of this claim, Petitioner contends that California statutory language mandates that "[a]ll relevant, reliable information available to the panel shall be considered in determining suitability for parole." Cal. Code of Reg., tit. 15, § 2402(b). However, as previously noted, a state's application of state law is outside the purview of federal habeas corpus review unless a constitutional right is thereby violated. See Jackson, 921 F.2d at 885; Oxborrow, 877 F.2d at 1400.

Further, as previously noted, Petitioner admitted that he was given an opportunity to be heard at his parole hearing and was

provided with a statement of the reasons why parole was denied. (Petition, Exh. 1, Opposition to Motion to Dismiss at 5)

Again, Petitioner relies on his contention that the parole panel was biased to explain why the third claim for relief may be heard by a federal court. Since the Court has recommended denial of Petitioner's bias claim as discussed supra, the Court does not find merit in Petitioner's arguments.

Therefore, the Court RECOMMENDS that Respondent's Motion to Dismiss in this regard be GRANTED.

Consequently, this Court RECOMMENDS that Respondent's Motion to Dismiss be GRANTED.

VI

CONCLUSION AND RECOMMENDATION

After a review of the record in this matter, the undersigned Magistrate Judge recommends that the Respondent's Motion to Dismiss be GRANTED.

This Report and Recommendation of the undersigned Magistrate Judge is submitted to the United States District Judge assigned to this case, pursuant to 28 U.S.C. § 636(b)(1).

IT IS ORDERED that no later than July 22, 2011, any party to this action may file written objections with the Court and serve a copy on all parties. The document should be captioned "Objections to Report and Recommendation."

IT IS FURTHER ORDERED that any reply to the objections shall be filed with the court and served on all parties no later than August 5, 2011 The parties are advised that failure to file objections within the specified time may waive the right to raise

those objections on appeal of the Court's order. Martinez v. Ylst, 951 F.2d 1153 (9th Cir. 1991).

DATED: June 23, 2011

Hon. William V. Gallo
U.S. Magistrate Judge